IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION (L) NO.609 OF 2006

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Trambak Holdings Pvt.Ltd. ...Petitioners

v/s.

Mrs.Mridula Arun Vijayakar

and ors. ...Respondents

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Mr.P.K. Samdhani with Mr.C.D.Mehta i/b Dhruve Liladhar & Co. for the Petitioners.

Ms Deepa Chavan with Mr.Rajeev Bhatia i/b Little & Co. for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 9TH NOVEMBER,2006

P.C.:

1. By consent of parties Petition is heard finally.

2. Admitted position is that the Respondents Nos. 1 & 2 had entered into agreement for development of the property with the Petitioner. The development of the property was to take place after tenants vacate the premises. The tenants could not vacate the premises. As a result the settlement agreement was admittedly reached between the parties. In that settlement agreement it was provided that the Respondents Nos. 1 & 2 shall refund Rs.1,24,00,000/- (Rupees One crore & Twentyfour lakh) to the Petitioner on or before 30th April, 2003 and in case the amount is so refunded the Development Agreement was to come to an end, otherwise the Petitioner was to become entitled to enforce the Development Agreement. Admitted position is that by 30th April, 2003 the amount of Rs.1.24 crore as agreed, was not refunded by the Respondents Nos. 1 & 2 to the Petitioner. Without refunding the amount and without getting that agreement cancelled, it appears that the Respondents

Nos. 1 & 2 started dealing with the property. They have got the tenants vacated. They have pulled down the building and they are likely to take up the work of construction of the building on the land. The conduct of the Respondents Nos. 1 & 2 shows that they have no regard for the agreement that they entered into. They have entered into solemn agreement to pay to the Petitioner an amount of Rs.1.24 crore by a particular date. Their failure to make the payment by that date keeps the Development Agreement intact. Without getting that agreement set aside and without making the payment, the Respondents Nos. 1 & 2 could not have dealt with the property. In this situation, therefore, if suitable interim order is not passed, the Respondents Nos. 1 & 2 are likely to further deal with the property and enter into transaction which may jeopardise the interest of the unsuspecting third parties.

3. In my opinion, therefore, in order to prevent the Respondents Nos. 1 & 2 from continuing to deal with the property and go on creating third party interests, it will be appropriate to appoint the Receiver on the property so that the property is protected.

4. This petition is, therefore, granted in terms of prayer clause (a). Respondents Nos. 1 & 2 are willing to act as agent of the Receiver. Receiver is therefore, directed to take only symbolic possession of the property and appoint the Respondents Nos. 1 & 2 as his agent to be in possession of the property on usual terms and condition except royalty and security. Till the Receiver takes possession, ad-interim order in terms of prayer clause (b) shall operate. The learned Counsel appearing for the Respondents Nos. 1 & 2 states that they have already created third party rights in favour of some persons and that the Respondents Nos. 1 & 2 within a period of one week from today furnishing full details of those third parties and transaction entered in to with them to the Petitioner.

Receiver to act on ordinary copy of the order duly authenticated by the Private Secretary of the Court as a true copy.

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